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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted]102

LOCAL UNION NO. 721, UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO,
*Petitioner,*

*vs.*

NEEDHAM PACKING COMPANY, D/B/A SIOUX CITY DRESSED BEEF, A CORPORATION,
*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA.

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THE GOTTSDIEN-GRAHAM PRINTING COMPANY, CHICAGO

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NEEDHAM PACKING COMPANY, D/B/A SIOUX CITY DRESSED BEEF, A CORPORATION,

*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA.

Petitioner, Local Union No. 721, United Packinghouse, Food and Allied Workers, AFL-CIO, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Iowa, entered in the above-entitled cause on January 15, 1963.

### CITATION TO OPINION BELOW.

The unreported opinion of the Woodbury County District Court (technically, under Iowa procedure, a Ruling on Points of Law) is reprinted at pages 61-73 of the Record.* The opinion of the Supreme Court of Iowa,

* Record citations are to the Record printed for use of the Supreme Court of Iowa below, nine copies of which have been filed with this Court together with the Certified Transcript.

reprinted in the Appendix, *infra*, pp. 11-17, has not been reported officially.

## JURISDICTION.

The judgment of the Supreme Court of Iowa was entered on January 15, 1963. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3).

## QUESTIONS PRESENTED.

1. Whether, in a suit to compel arbitration under Section 301(a) of the Labor-Management Relations Act of 1947, the Court usurps the function of the arbitrator in deciding that a walkout allegedly in violation of a no-strike clause in the collective bargaining agreement amounts to a waiver by the union of its right to arbitrate.

2. Whether, in a suit under Section 301(a) to compel arbitration, a court can decide, on the pleadings, that a walk-out violated the no-strike clause even though the union expressly denied such violation.

3. Whether, in a suit under Section 301(a) to compel arbitration, the court usurps the function of the arbitrator in deciding that participation in a walkout allegedly in violation of a no-strike clause is just cause for discharge.

4. Whether filing unfair labor practice charges with the National Labor Relations Board constitutes a waiver by the union of its contract right to submit to arbitration the separate issue of whether the discharges were for just cause within the terms of the collective bargaining agreement.

## STATUTE INVOLVED.

The statutory provision involved is Section 301(a) of the Labor-Management Relations Act of 1947, 29 U. S. C. § 185(a), which reads as follows:

Suits for violation of contracts between an employer

and a labor organization representing employees in an industry affecting commerce as defined in this act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

## STATEMENT.

Petitioner, a labor organization, filed a petition in equity on August 26, 1961 in the District Court of Woodbury County, Iowa, invoking that court's concurrent jurisdiction under Section 301(a) of the Labor-Management Relations Act of 1947 (R. 3-11). The petition sought a decree compelling the employer-Respondent to submit two grievances to arbitration in accordance with the provisions of a collective bargaining agreement between Petitioner and Respondent (R. 11-35). One grievance charged Respondent with a breach of the collective bargaining agreement by the improper discharge of an employee; the other protested the improper discharge of 190 employees and sought their reinstatement (R. 36-37).

Respondent filed an answer and a counterclaim and pleaded certain affirmative and legal defenses (R. 42-48). Among other matters, Respondent alleged that Petitioner and its members had engaged in a strike contrary to the no-strike clause in the agreement, and that Petitioner's "election of a strike constituted a waiver of any right to proceed further on said alleged grievance . . ." (R. 44-45). In its reply, Petitioner denied that it had engaged in strike action and asserted that "questions concerning any alleged waiver of [its] right to arbitrate . . . [concern] the merits of the grievance . . . and must be determined solely by the arbitrator . . ." (R. 48-50).

On January 10, 1962, Respondent filed an application, pursuant to Rule 105 of the Iowa Rules of Civil Procedure, asking the court to hear and determine points of law raised in the pleadings (R. 60). Specifically, the Iowa court was asked to rule that Petitioner was not entitled to compel Respondent to arbitrate for the reasons that:

1. Under Iowa law and procedure an executory agreement to arbitrate was not specifically enforcible;
2. Petitioner had waived its right to arbitrate a) by "bringing an action before the NLRB to enforce its claimed rights"; and b) by engaging in a walkout in violation of contract; and
3. The notice of grievance was not timely.

On Februdry 13, 1962, the Iowa court sustained all of Respondent's contentions except the third, which the court stated could not be determined upon the pleadings alone (R. 61-73). Specifically, the court rejected Petitioner's contentions that federal law and not state law applied; that under federal law the arbitrator and not the court should determine the effect, if any, of an alleged walkout in violation of a "no-strike" clause; and that filing unfair labor practice charges with the NLRB did not waive the contractual right to arbitrate.

The court held that Iowa law and not federal law applied; that under Iowa common law an executory agreement to arbitrate would not be specifically enforced; that filing an unfair labor practice charge protesting the discharges constituted a waiver of the right to arbitrate under the contract; and that the walkout assertedly in violation of the "no-strike" clause (notwithstanding Petitioner's express denial in the pleadings) also amounted to a waiver of the right to arbitrate (R. 61-73). These rulings completely adjudicated Petitioner's rights and had the effect of dismissing the petition on matters of law. There

remained for adjudication in the lower court only Respondent's counterclaim for damages for breach of contract.

Petitioner promptly applied to the Supreme Court of Iowa for an order allowing an interlocutory appeal (R. 74-78), which application was granted (R. 78). On January 15, 1963, the Supreme Court affirmed the lower court (Appendix, pp. 11-17). Since Respondent had conceded that the lower court erred in refusing to recognize that federal law applied, the Supreme Court of Iowa acknowledged that federal law governed and that under that law arbitration clauses in collective bargaining agreements are specifically enforceable (Appendix, pp. 13-14).

The Court went on to hold, however, that Petitioner had waived its right to arbitrate by the alleged walkout in breach of the no-strike clause in the collective agreement, notwithstanding the fact that Petitioner had expressly denied violating the no-strike clause. One Justice dissented, stating (Appendix, p. 17): "What I believe to be the error in the majority opinion is holding that once an evidence of a violation of a no-strike clause appears the parties are no longer required to arbitrate."

The majority opinion also observed (Appendix, p. 16): "Two other matters are urged but we find no merit therein and make no comment thereon." Counsel has no means of determining to what "two other matters" the Supreme Court had reference, although they may have been reasons urged by Respondent for affirmance. Only one "other matter" was urged by Petitioner—that the lower court erred in holding that Petitioner had waived its rights to arbitrate by filing unfair labor practice charges. Since it is conceivable that this is one of the "other matters" the Supreme Court had in mind and that it intended to affirm the lower court on this issue also, Petitioner considers it necessary to bring the issue before this Court.

## REASONS FOR GRANTING THE WRIT.

1. The decision of the Iowa Supreme Court is directly in conflict with recent decisions of this Court. The decision below holds that: 1) as a matter of Federal law, a union is barred from arbitrating the discharge of employees for participating in a walkout allegedly in violation of a no-strike clause; and 2) a court can determine, from the pleadings alone and despite the union's denial of any violation, that a walkout is in violation of a no-strike clause.

It has never been contended that the grievances here involved are not arbitrable under the collective bargaining agreement. In deciding that a walkout allegedly contrary to a no-strike clause amounts to a waiver of the right to arbitrate the question of just cause for discharge of employees for participation in the walkout, the Iowa courts have necessarily usurped the function of the arbitrator and decided the *merits* of grievances.

The decision thus flies in the face of this Court's decisions in *United Steelworkers of America* v. *American Mfg. Co.*, 363 U. S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574 (1960); and *United Steelworkers of America* v. *Enterprise Wheel and Car Corp.*, 363 U. S. 593 (1960), in which this Court delineated the respective functions of court and arbitrator, leaving to the arbitrator all determinations of the merits. The decision of the Iowa Supreme Court holds that a court may invade the province of the arbitrator and decide whether an alleged strike was just cause for discharge. This amounts to deciding the merits of the dispute.

The Iowa ruling is also at odds with this Court's reasoning in *Drake Bakeries, Inc.* v. *Local 50, American Bakery and Confectionery Workers*, 370 U. S. 254 (1962), in which this Court rejected the argument that an employer defeats

the union's right to arbitrate by claiming a breach of the no-strike clause in a situation in which the union has specifically denied that there was a strike.

2. The decision below is directly in conflict with the decision of the United States Court of Appeals for the Third Circuit in *International Moulders and Foundry Workers Union, Local 239* v. *Susquehanna Casting Co.*, 283 F. 2d 80 (1960), in which the facts and the employer's arguments were all but identical to those in the present case. The Court of Appeals ordered arbitration, pointing out that the case was "precisely suited to the arbitration process under the agreement that the parties have made", and that the arbitrator must decide whether the walkout was justified and, if not, whether discharge was a proper penalty.

The decision below is also directly in conflict with the decision of the Court of Appeals for the Sixth Circuit in *Local 748, Int'l Union of Electrical, Radio and Machine Workers* v. *Jefferson City Cabinet Co.*, 313 F. 2d ....., 46 CCH Lab. Cases ¶ 18,100, decided on February 23, 1963. There, on facts very similar to those here, the Court of Appeals rejected the employer's arguments as to waiver by breach of a no-strike clause and directed the employer to arbitrate the discharges of employees who participated in the strike.*

Insofar as the Supreme Court of Iowa may have intended to affirm the lower court's ruling that filing an unfair labor practice charge with the National Labor Relations Board waived the union's right to arbitrate the discharges, it is directly contrary to the decision of the

* Since this Petition was set up in page-proof, counsel have noted a decision of the Court of Appeals for the Fourth Circuit which is contrary to that of the Supreme Court of Iowa. *United Textile Workers of America, AFL-CIO, Local 120* v. *Newberry Mills, Inc.*, ..., F. 2d ....., 47 CCH Lab. Cases ¶ 18,157, decided March 6, 1963.

United States Court of Appeals for the Fifth Circuit in *Lodge No. 12, Int'l Ass'n. of Machinists* v. *Cameron Iron Works*, 257 F. 2d 467 (1958), cert. den. 358 U. S. 880 (1958).

3. The decision of the Iowa Court construes *Textile Workers Union* v. *Lincoln Mills of Alabama*, 353 U. S. 448 (1957), in a manner at odds with that opinion and with this Court's interpretation of it. The Court below referred to the "quid pro quo" rule of *Lincoln Mills*, and applied it as follows (Appendix p. 16):

> If . . . the view is taken that a no-strike clause means what it says and that if the Union has the right to require arbitration of differences arising between it and the Company then the Company has a similar right to have the Union abide by its agreement we are well along the road to labor and management tranquility. It "should not have its cake and eat it too". We think the "quid pro quo" view advanced in the *Lincoln* case, supra, is the sound and sensible rule to adopt . . . We think the trial court was correct in holding the Union had waived its right to arbitrate the grievances filed by its walkout.

The Iowa Court thus viewed the language in *Lincoln Mills* (353 U. S. 448, 455)—"Plainly the agreement to arbitrate grievances disputes is the quid pro quo for an agreement not to strike"—as though the arbitration and no-strike provisions were "mutually dependent covenants". Yet this Court has declined to accept such an interpretation and has emphasized that there is "no . . . inflexible rule rigidly linking no-strike and arbitration clauses of every collective bargaining contract in every situation." *Drake Bakeries* v. *Local 50, American Bakery and Confectionery Workers*, 370 U. S. 254, 261, fn. 7 (1962). The Iowa Court's mechanical view of a "quid pro quo" rule would mean not only that every violation of the no-strike clause would preclude arbitration, but also that every refusal by an employer to arbitrate would relieve the Union of its obli-

gation not to strike. "Arbitration provisions, which themselves have not been repudiated, are meant to survive breaches of contract, in many contexts, even total breach . . ." 370 U. S. 254, 262 (1962).

The Congressional policy of having the parties resolve their disputes by a method agreed upon by them would be greatly hampered were the Iowa Court's conception of what it calls the "quid pro quo" rule to prevail. This Court has repeatedly called attention to the importance of fashioning a body of federal labor relations law which will "preserve the stabilizing influence of the collective bargaining contract . . ." *Drake Bakeries* v. *Local 50, American Bakery and Confectionery Workers*, 370 U. S. 254, 263-64 (1962); cf. *Textile Workers Union* v. *Lincoln Mills of Alabama*, 353 U. S. 448, 456-57 (1957); *United Steelworkers of America* v. *American Mfg. Co.*, 363 U. S. 564, 566-67 (1960).

The position taken by the Supreme Court of Iowa would go far to undermine the stability thus far achieved by Congress and this Court.

## CONCLUSION.

This Petition outlines a fundamental divergence between a state supreme court's view of an important area of federal labor relations law and that of this Court and of several Courts of Appeals. Admittedly, such a conflict is less usual than those between Courts of Appeals. Since state courts may interpret, apply, and fashion federal law with respect to collective bargaining agreements, however, it is probable that the type of conflict here involved will become more frequent. The need for uniformity among the highest courts of the states and the Courts of Appeals in the interpretation and application of federal law would seem apparent.

The decision of the Supreme Court of Iowa creates diversity and conflict which this Court, in keeping with its traditional functions, should "resolve and accommodate . . ." *Dowd Box Co.* v. *Courtney*, 368 U. S. 502, 514 (1962).

For the foregoing reasons, the Petition should be granted.

Respectfully submitted,

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## APPENDIX.

### IN THE SUPREME COURT OF IOWA.

| | |
|---|---|
| Local Union No. 721, United Packinghouse Food and Allied Workers, AFL-CIO, *Appellant*, *vs.* Needham Packing Company, Inc., d/b/a Sioux City Dressed Beef, a Corporation, *Appellee.* | 164<br>50664<br>Filed<br>January 15, 1963. |

* * * * *

Appeal from Woodbury District Court. George M. Paradise, Judge.

* * * * *

Appeal from order on points of Law under Rule 105, R. C. P., as to force and effect of a no-strike clause in a collective bargaining agreement. Affirmed and Remanded.

* * * * *

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Plaintiff, as bargaining agent for employees of the defendant, and defendant entered into a collective bargaining agreement which contained the following provision, being paragraph 33-C(5) thereof, "In the event a dispute shall arise between the Company and the Union with reference to the proper interpretation of (sic) application of the provisions of this contract and such dispute cannot be settled by mutual agreement of the parties, such dispute shall be referred to a board of arbitration *upon the request of the Union.* * * * Said Arbitration Board shall have authority only to interpret and apply the provisions of this contract. Its award * * * shall be binding upon the Company and the Union and upon the employees involved" (Italics added). The agreement, paragraph 9, provided: "It is agreed that during the period of this agreement the employees shall not engage in and the Union shall not call or sanction any slow down, work stoppage or strike, and no lock out shall be inaugurated (sic) by the Company".

This equitable action brought by the Union seeks to specifically enforce arbitration by the Company of certain grievances filed by the Union and which the Company refuses to arbitrate. Generally, the facts as set forth in the pleadings are,—In May 1961, the Company discharged an employee, such discharge being arbitral as to whether it was for just cause, as authorized by paragraph 8(a) of the bargaining agreement. Following such discharge, 190 employees left their jobs and have refused to return until the question of just cause for the discharge of the one employee has been adjusted. The Company contends that by walking out the employees breached Par. 9 of the bargaining agreement and that the same is no longer in force and effect. It is not seriously contended in this court that the 190 workers did not walk off the job and are still refusing to return thereto. Also, by counterclaim the Company asks substantial damages on account of the walk-

out. The Company made application to the Court to rule upon three points of law, as provided for under Rule 105, R. C. P., to-wit: (1) Plaintiff not entitled to relief since Iowa law denies specific enforcement of an executory agreement to arbitrate. (2) Plaintiff not entitled to relief since it has waived the right to enforce arbitration provision, by the walkout and by filing complaint before the NLRB to enforce its claim. (3) No grievance filed within time required by agreement and the right to arbitrate has expired. The trial court sustained defendants's contention as stated in No. (1) and (2) above and rejected No. 3, leaving for further determination the damage issue presented by the counterclaim. Plaintiff was granted permission to appeal under Rule 332 R. C. P.

I. Error No. 1, is to the effect that the issues raised in the case must be determined under federal law, not the state. It is conceded that the questions here come within the purview of Section 301(a) 29 U. S. C. Sec. 185(a) which provides as follows: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." The United States Supreme Court, while holding that State Courts may hear and determine controversies coming under Section 301(a), held that in so doing they must apply and follow the federal law. *Dowd Box Co.* v. *Courtney*, 368 U. S. 502, 82 S. Ct. ....., 7 L. Ed 2d 483. In the leading case of *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, 455, 77 S. Ct. 923, 1 L. ed. 2d 972, the Court said "Plainly the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike. Viewed in this light, the legislation

(Section 301) does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way". (Italics ours). See also, *Teamsters, Chauffeurs, Warehousemen & Helpers* v. *Lucas Flour Co.*, 369 U. S. 95, 7 L. ed. 2d 593, 82 S. Ct. 571; *Atkinson* v. *Sinclair Refining Co.*, 370 U. S. 238, 8 L. ed. 2d 462, 82 S. Ct. ____. Appellee concedes in argument that Federal law must be applied so we need spend no further time on this assigned error except to say that under Federal law, agreements to arbitrate may be specifically enforced. *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U. S. 564, 4 L. ed. 2d 1403, 80 S. Ct. 1343; *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574, 4 L. ed. 2d 1409, 80 S. Ct. 1347; *United Steelworkers of America* v. *Enterprise Wheel and Car Corporation*, 363 U. S. 593, 4 L. ed. 2d 1424, 80 S. Ct. 1358.

II. Error is claimed on the Court's ruling that right to arbitration was waived by the walkout. The appellant cites and relies upon the three steelworker cases, last above cited. In those cases arbitration was ordered but in none of them was the breach of a no strike clause involved as it is in the instant case. We do not find that the exact question before us has been determined, however there are cases dealing with the no strike clause. *Atkinson* v. *Sinclair Refining* case, *supra*, is an action by the Refining Co., to recover damages for a breach of a no-strike clause in a bargaining agreement. Defendant moved to stay proceedings pending arbitration. The stay was denied, the court saying the agreement expressly provides that arbitration may be invoked only at the option of the Union. At no place in the contract does the Union agree to arbitrate at the behest of the Company. The Company is to take its claim elsewhere,

which it has now done. In *Drake Bakeries* v. *Local 50, American Bakery & Confectionery Workers International AFL-CIO*, 370 U. S. 254, 8 L. ed. 2d 474, 82 S. Ct. ——, decided the same date as the *Sinclair* case, *supra*, the court ordered a stay of action for damages on account of a breach of a no-strike clause pending arbitration. It bases its holding upon the all inclusive provision in the agreement to arbitrate, saying that the arbitration agreement "obligated the Company to arbitrate its claim for damages from forbidden strikes by the Union".

While in the *Bakeries* case, the Company contended, under the "quid pro quo" rule, (See *Lincoln* case *supra*) there was a waiver of right to arbitrate the court states no such action was taken by the Company and no decision was made thereto. In the instant case we are squarely faced with issue of a waiver of right to arbitrate because of breach of no-strike clause.

In the *Warrior & Gulf* case, *supra*, the court said, page 583 of 363 U. S. "A collective bargaining agreement may treat only with certain specific practices, leaving the rest to management but subject to the possibility of work stoppages. When, however, an absolute no-strike clause is included in the agreement, then in a very real sense anything that management does is subject to the agreement * * *". Whether the "quid pro quo" rule will be followed to the extent of declaring a breach of a no-strike clause constitutes a waiver of rights to arbitrate under the agreement, depends upon the view to be taken of Section 301(a), *supra*. Clearly, under said rule work stoppage by strikes, etc., is not conducive to economic tranquility and progress. If the view is taken that a strike is merely another incident or grievance which should be decided as are other contract violations, it would seem the Company has relinquished many valuable rights and received nothing in return and

arbitration agreements will be shied away from. In fact the purpose of Section 301(a) will be entirely emasculated. If, on the other hand, the view is taken that a no-strike clause means what is says and that if the Union has the right to acquire arbitration of differences arising between it and the Company then the Company has a similar right to have the Union abide by its agreement we are well along the road to labor and management tranquility. It "should not have its cake and eat it too". We think the "quid pro quo" view advanced in the *Lincoln* case, *supra*, is the sound and sensible rule to adopt. This is the view in effect taken by the trial court and though Iowa laws were being applied, we see no conflict with the federal laws and think that actually it was federal law that was used. We think the trial court was correct in holding the Union had waived its right to arbitrate the grievances filed by its walkout.

Two other matters are urged but we find no merit therein and make no comment thereon.

The order of the trial court is affirmed and cause remanded for further proceedings pending therein.

AFFIRMED AND REMANDED.

Garfield, C. J., Larson, Thompson, Peterson, Snell and Moore, JJ. concur.
Thornton, J., dissents.
Stuart, J., takes no part.

Thornton, J. (dissenting).

I respectfully dissent. The pleadings in this case should not be construed to hold that a violation of the no-strike clause is admitted or stands undenied. The question is not ready for decision under rule 105, Rules of Civil Procedure.

Further, the parties have agreed on a tribunal for the determination of questions arising, "with reference to the proper interpretation or application of the provisions of this contract." This provision is not a narrow one. It includes the no-strike clause. The fact that arbitration may be instigated only at the request of the union should not be determinative. The company has so agreed. Whether or not there has been a violation of the no-strike clause is proper for the arbitrators to consider in determining the grievance. A waiver would go to the merits of that question.

What I believe to be the error in the majority opinion is holding that once an evidence of a violation of a no-strike clause appears the parties are no longer required to arbitrate. Under the broad provision for arbitration violations by both parties must be considered by the arbitrators.

Under the provisions of this contract where the union has requested arbitration in accordance with the contract that proceedings should be compelled. The company is denied no rights. It has agreed to be bound by the award of the arbitrators. If after that proceedings is complete it has a damage claim it may proceed in the courts. That is no concern of ours at this time. I would reverse.